

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
)	

REPLY COMMENTS OF TDS TELECOMMUNICATIONS CORPORATION

TDS Telecommunications Corporation (TDS Telecom), on behalf of its 108 incumbent local exchange carriers (ILECs) in 28 states, which provide the universal services designated by joint state and federal action under section 254, and by its attorneys, submits these reply comments to respond to comments in the above-captioned proceeding on whether to expand the definition of universal services. TDS Telecom will confine these reply comments to recommending a way for the Commission to reconcile the somewhat conflicting array of statutory provisions, rules, policies and interpretations that has clouded much of the analysis in the record so far and, thus, ensure that the decision here will further the universal service objectives Congress enacted.

The key to fulfilling Congress's goals with respect to defining and updating the definition of universal service lies in recognizing that Congress did not intend -- and could not have intended -- a single, rigid definition of universal services for all of the Act's purposes. Subsections 254 (a) and (b), for example, call for an initial Joint Board and Commission process to recommend changes to its rules, followed by Commission adoption and implementation of rules, on a stated schedule, that include a "definition of the services that are supported by Federal

universal service support mechanisms” (emphasis added). Thus, Subsection (a) provides a floor for the universal service definition. Subsection (b) then goes on to articulate principles “for the preservation and advancement of universal service,” which include not only “access to advanced telecommunications and information services should be provided in all regions of the Nation,” §254(b)(2), but also, in §254(b)(3),

access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.¹

These principles, of course, go well beyond the initial list of “services that are supported by Federal ... mechanisms” adopted by the Commission under the prescribed §254(a) process. They provide for the “advancement” component of the policy of “preserving and advancing” universal service over time.

Subsection (c), in turn, enacts a process for implementing the “advancement” policy established in the principles. “Periodically,” the provision directs,” the Commission “shall establish” an “evolving level” of “services that are supported by Federal universal service support mechanisms.” The Commission must take into account “advances in telecommunications and information technologies and services” and must consider several criteria for evolving the definition.

Subsection 254(e) restricts the availability and use of federal universal service support once the initial §254(a) rules take effect: First, “only an eligible telecommunications carrier designated under Section 214(e) shall be eligible to receive specific Federal universal service

¹ The principle in subsection (b)(5) links support to the dual objective to “preserve and advance” by specifying that support mechanisms should also be :specific, predictable and sufficient ... to preserve and advance universal service.”

support.” Second, “[a] carrier that receives such support shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.” The appropriate level and use of specific federal support should be more readily evident because “[a]ny such support should be explicit” as well as “sufficient to achieve the purposes of this section.”² It is significant that the provision expressly includes “upgrading of facilities and services” eligible for support within the acceptable uses of support received by a particular carrier.

Section 254 thus specifies what services are eligible to receive support, starting with the floor developed in the rules implementing subsection (a) and anticipating upgrades and evolution, but expressly leaves it to §214(e) to specify what carriers are eligible for support. Section 214(e) governs what carriers may qualify “to receive universal service support in accordance with Section 254,” (emphasis added). The carrier eligibility section provides that eligible telecommunications carriers (ETCs) “shall, throughout the service area for which the designation is received ... offer [and advertise] the services that are supported by Federal universal service support mechanisms under Section 254(c),” (emphasis added), “either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier).”

Section 214(e) states that a carrier must offer and advertise all supported services to obtain support, which must (both logically and under the language of §254(e)) include upgrades, once the §254(a) services are available. Plainly an excessively strict reading of the provision to require provision of all services to all customers to qualify for any support would preclude

² The Fifth Circuit has explained that “sufficient” means enough, but no more than enough support for the Act’s universal service purposes. *Alenco v. FCC*, [201 F.3d 608](#), 620 (5th Cir. 2000) (“excessive funding may itself violate the sufficiency requirements of the Act.”).

“sufficient” support to deploy the evolving or new services Congress expressly set forth in the §254 principles. Consistent with the reference to “the services that are supported,” the Commission has emphasized the receipt of support in interpreting the service provision condition for designation in §214(e)(1) to mean:

1. that a carrier may obtain an ETC designation before it actually fully provides the services required for designation, and “then must provide the designated services to customers pursuant to the terms of section 214(e) in order to receive support”,³
2. “that ETC designation only allows the carrier to become eligible for federal universal service support ... [and] [s]upport will be provided to the carrier only upon the provision of the supported services to consumers.”⁴
3. that a designated ETC has several ways to provide supported services to customers, including resale of another carrier's services, but “that a demonstration of the capability and commitment to provide service must encompass something more than a vague assertion of intent on the part of a carrier to provide service.”

TDS Telecom believes that faithful application of the statute and these practical interpretations will provide the Commission with an ideal framework to provide for the evolution of the nation’s networks to broadband capabilities, without overburdening the nation’s end users with excessive universal support recovery charges. The Commission should, accordingly, adopt the proposals in TDS Telecom’s opening comments, which are consistent with this coordinated view of the laws, rules , policies and Commission interpretations. The Commission should focus on what network functions and capability that should be available to all customers, as it has in

³ Federal-State Joint Board on Universal Service, Western Wireless Corporation (Petition for Preemption of an Order of the South Dakota Public Utilities Commission), FCC 00-248, CC Docket No. 96-45, 15 FCC Rcd 15168 (rel. Aug.10, 2000) (Declaratory Ruling), quoting from and citing “Federal-State Joint Board on Universal Service, Report and Order, CC Docket No. 96-45, 12 FCC Rcd 8876, 8853, para. 137 (1997), as corrected by Federal-State Joint Board on Universal Service, Erratum, CC Docket No. 96-45, FCC 97-157 (rel. June 4, 1997), aff’d in part, rev’d in part, remanded in part sub nom. Texas Office of Public Utility Counsel v. FCC, 183 F.3d 393 (5th Cir. 1999) cert. granted, 120 S.Ct. 2214 (U.S. June 5, 2000) (No. 99-1244) (Universal Service Order) (emphasis in original).”

⁴ Declaratory Ruling, ¶20. The Commission emphasized in the Declaratory Ruling that “ETC designation prior to the provision of service does not mean that a carrier will receive support without providing service,” citing Universal Service Order, 12 FCC Rcd 8853, para. 137, and that “the state commission may revoke a carrier’s ETC designation if the carrier fails to comply with the ETC eligibility criteria,” id., para 20, footnote omitted.

the past, but recognize the statutory intention for upgrades to the supported functions and capabilities set as the floor in the initial §254 definition establishing the benchmark for the “preservation” of universal service. The Commission should also continue to apply the current, largely-functional definition. By removing its remaining universal service caps, it can continue to permit additional investment that increases customers’ access to broadband capability via wireline loops without requiring a change in definition. In addition, so long as a carrier is providing, or able to provide on request, all services on the original list of core services eligible for support, the Commission should consider expanding the supported services to include evolutionary support for upgrades, tailoring support to the pace and nature of each carrier’s upgrades.

The Commission should also refine its portability and certification rules and begin meaningful enforcement of § 254(e) to ensure that end users are not burdened for support to carriers that are exempt from services within the core definition or not yet able to upgrade to provide the network functions and capabilities for which support for “advancing” universal service is intended: In other words, in an environment where the national support bill has been increasing, the Commission owes it to all consumers to match support to each carrier’s costs, technology and the capabilities of the platform it deploys. In that way, both competing and incumbent designated ETCs will receive support for the universal service functions and capabilities they actually provide, but no carrier will receive the unwarranted advantage of support payments for services or capabilities it does not make available.

The Commission will need to tailor its support mechanisms more precisely to different carriers’ costs and technologies to better its compliance with the law and to prevent consumers from overpaying for universal service support. However, the effort is well justified – and, in

fact -- legally required, by (1) the statutory requirements for “sufficient,” but not excessive, “predictable” and “specific” support, used “only for the provision, maintenance, and upgrading of facilities and services for which the support is intended”; (2) the Commission’s policies permitting ETC designation before a carrier provides all universal services, so long as actual support is provided to the carrier “only upon the provision of the supported services to consumers” and fostering competitively neutral universal service mechanisms; and (3) the mandate in §706 to remove obstacles to timely broadband deployment.

Respectfully submitted,

TDS TELECOMMUNICATIONS CORPORATION

By: /s/ Margot Smiley Humphrey
Margot Smiley Humphrey

HOLLAND & KNIGHT LLP
2099 Pennsylvania Avenue, N.W.
Suite 100
Washington, D.C. 20006-6801
(202) 457-5915
mhumphre@hklaw.com

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CERTIFICATE OF SERVICE

I, Naja Gamble-Wheeler, employee of Holland & Knight LLP, 2099 Pennsylvania Avenue, Suite 100, Washington, DC 20006, do hereby certify that a copy of the foregoing Reply Comments of TDS Telecommunications Corporation was sent on this 4th day of January, 2002, via hand delivery or by first class mail, to the following parties:

Nebraska Public Service Commission
300 The Atrium
1200 N. Street
P.O. Box 94927
Lincoln, NE 68509-4927

Larry Stevens
Iowa Utilities Board
350 Maple Street
Des Moines, IA 50319

Carl Johnson
New York Public Service Commission
3 Empire State Plaza
Albany, NY 12223-1350

Lori Kenyon
Regulatory Commission of Alaska
1016 West 6th Avenue
Suite 400
Anchorage, AK 95501

Nancy Zearfoss, Ph.D
Maryland Public Service Commission
6 St. Paul Street
19th Floor
Baltimore, MD 21202-6806

Jennifer Gilmore
Indiana Utility Regulatory Commission
Indiana Government Center South
302 West Washington Street
Suite E306
Indianapolis, ID 46204

Michael Lee
Montana Public Service Commission
1701 Prospect Avenue
P.O. Box 202601
Helena, MT 59620-2601

Susan Stevens Miller
Maryland Public Service Commission
16th Floor
6 Paul Street
Baltimore, MD 21202

Tom Wilson
Washington Utilities & Transportation
Commission
1300 Evergreen Park Drive, S.W.
P.O. Box 47250
Olympia, WA 98504-7250

Philip McClelland
PA Office of Consumer Advocate
555 Walnut Street, Forum Place
5th Floor
Harrisburg, PA 17101

Barbara Meisenheimer
Missouri Office of Public Counsel
301 West High Street
Suite 250
Truman Building P.O. Box 7800
Jefferson City, MO 65102

Jeffrey A. Brueggeman
Gary L. Phillips
Paul K. Mancini
SBC Communications Inc.
1401 I Street NW 11th Floor
Washington, DC 20005

David Dowds
Florida Public Service Commission
2540 Shumard Oaks Blvd.
Gerald Gunter Bldg.
Tallahassee, FL 32399

Anthony Myers
Maryland Public Service Commission
16th Floor
6 Paul Street
Baltimore, MD 21202-6806

Tim Zakriski
NYS Department of Public Service
3 Empire State Plaza
Albany, NY 12223

Matthew Brill
Federal Communications Commission
445 12th Street, S.W.
Room 8-A204
Washington, DC 20554

Earl Poucher
Office of the Public Counsel
111 West Madison
Room 812
Tallahassee, FL 32399-1400

Ann Dean
Maryland Public Service Commission
16th Floor
6 Paul Street
Baltimore, MD 21202-6806

Michele Farris
South Dakota Public Utilities Commission
State Capitol
500 East Capitol Street
Pierre, SD 57501-5070

Diana Zake
Texas Public Utility Commission
1701 N. Congress Avenue
Austin, TX 78711-3326

Kathleen Q. Abernathy
Federal Communications Commission
445 12th Street, S.W.
Room 8-204
Washington, DC 20554

Kevin J. Martin
Federal Communications Commission
445 12th Street, S.W.
Room 8-C302
Washington, DC 20554

Samuel Feder
Federal Communications Commission
445 12th Street, S.W.
Room 8-C302
Washington, DC 20554

Michael J. Copps
Federal Communications Commission
Room- 8-A302
445 12th Street, S.W.
Washington, DC 20554

Jordan Goldstein
Federal Communications Commission
Room- 8-A302
445 12th Street, S.W.
Washington, DC 20554

Carol Matthey
Federal Communications Commission
445 12th Street, S.W.
Room- 5-C451
Washington, DC 20554

Katherine Schroder
Federal Communications Commission
Room- 5-A426
445 12th Street, S.W.
Washington, DC 20554

Sharon Webber
Federal Communications Commission
Room- 5-A425
445 12th Street, S.W.
Washington, DC 20554

Eric Einhorn
Federal Communications Commission
Room- 5-A425
445 12th Street, S.W.
Washington, DC 20554

Anita Cheng
Federal Communications Commission
Room- 5-A445
445 12th Street, S.W.
Washington, DC 20554

Gene Fullano
Federal Communications Commission
Room- 5-A623
445 12th Street, S.W.
Washington, DC 20554

Katie King
Federal Communications Commission
Room- 5-B544
445 12th Street, S.W.
Washington, DC 20554

Dana Bradford
Federal Communications Commission
Room5-A314
445 12th Street, S.W.
Washington, DC 20554

Paul Garnett
Federal Communications Commission
Room- 5-A623
445 12th Street, S.W.
Washington, DC 20554

Bryan Clopton
Federal Communications Commission
Room-5-A465
445 12th Street, S.W.
Washington, DC 20554

Greg Guice
Federal Communications Commission
Room 6-A232
445 12th Street, S.W.
Washington, DC 20554

Geff Waldau
Federal Communications Commission
Room5-B524
445 12th Street, S.W.
Washington, DC 20554

William Scher
Federal Communications Commission
Room5-B524
445 12th Street, S.W.
Washington, DC 20554

Qualex International
Portals II
445 12th Street, S.W.
Room CY B-402
Washington, DC 20554

Chairman Michael Powell
Federal Communications Commission
Room 5-8B201
445 12th Street, S.W.
Washington, DC 20554

James Rowe
Alaska Telephone Association
201 E. 56th, Suite 114
Anchorage, Alaska 99518

Lila A. Jaber, Commissioner
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399

J. Thomas Dunleavy
Commissioner
New York Public Service Commission
One Penn Plaza, 8th Floor
New York, NY 10119

Joel Shifman
Senior Advisor
Maine Public Utilities Commission
242 State Street
State House Station 18
Augusta, ME 04333-0018

Peter Bluhm
Director of Policy Research
Vermont Public Service Board
Drawer 20
112 State Street, 4th Floor
Montpelier, VT 05620-2701

Charlie Bolle,
Policy Advisor
Nevada Public Utilities Commission
1150 E. Williams Street
Carson City, NV 89701-3105

Peter Pescosolido
Chief, Telecom & Cable Division
State of Connecticut
Dept. of Public Control
10 Franklin Square
New Britain, CT 06051

Jeff Pursley
Nebraska Public Service Commission
300 The Atrium, 1200 N. Street
P.O. Box 94927
Lincoln, NE 68509

James R. Langenberg
Iowa Utilities Board
350 Maple Street
Des Moines, IA 50319